

DOCKET**Federal Defenders
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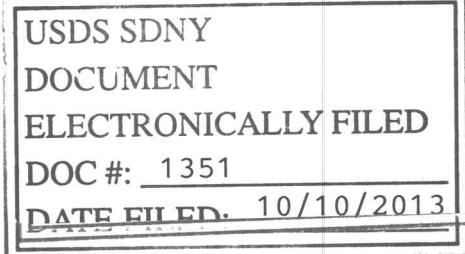
October 9, 2013

VIA EMAIL

Honorable Lewis A. Kaplan
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: United States v. Anas Al Liby, 98 Cr. 1023 (LAK)

Dear Judge Kaplan:



I write in reply to the Government's second letter objecting to the appointment of counsel for Anas Al Liby.

The Government repeats its reliance on this Court's decisions in *United States v. Adel Abdel Bary* and *United States v. Khalid Al Fawwaz*. As discussed in our initial letter, those cases involved starkly different circumstances and do not speak to the situation at hand.

Perhaps more importantly, the Government asserts that the Federal Rules of Criminal Procedure do not apply to Mr. Al-Libby because he has not been "criminally arrested" and is being detained for an unstated purpose by the United States Armed Forces. In making its argument, the Government cites to this Court's decision in *United States v. Ghailani*, 751 F.Supp.2d 515 (S.D.N.Y. 2010).

In *Ghailani*, this Court rejected the defendant's motion to dismiss the indictment based on Speedy Trial claims relating to his five-year detention by the CIA and the military before his appearance in federal court. In so doing, however, the Court engaged in an extensive analysis of Ghailani's status as an "enemy combatant," the details of how the determination of his status was made, the purpose of his CIA and military detention, and the particulars of the interrogation. Importantly, the Court held that the Speedy Trial Clause of the Constitution applied to Ghailani. The Court found only that under the particular circumstances of Ghailani's detention, it had not been violated.

Here, the Government has offered nothing in the way of explaining Mr. Al-Liby's status, much less asserted that he is an enemy combatant. Mr. Al-Liby is a defendant in an indicted case before this Court. Contrary to the Government's claim in its most recent letter, Federal Defenders is not merely relying on "newspaper accounts" of Mr. Al-Liby's circumstances. The Department of Defense has released its own press releases as referenced in our first letter. In addition, the Government's own letter to this Court today acknowledges that he is the custody of the United States.

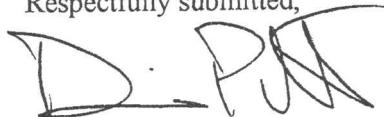
Honorable Lewis A. Kaplan
United States District Court

October 8, 2013
Page 2

Significantly, on Monday, October 7, the United States Secretary of State John Kerry made the following statement regarding Mr. Al-Liby: "An indictment is an accusation. In our legal system the defendant is presumed innocent until proven guilty, but he will now have an opportunity to defend himself and to be appropriately brought to justice in a court of law." (See CBS News, Kerry: Capture of Terror Suspect Al-Libi in Libya Legal, Oct. 8, 2013 found at http://www.cbsnews.com/8301-202_162-57606267/kerry-capture-of-terror-suspect-al-libi-in-libya-legal/).

Absent some showing by the Government that Mr. Al-Liby's status is anything other than a defendant in a criminal case, he must be provided counsel and afforded the process required by the Constitution and laws of the United States.

Respectfully submitted,



David E. Patton
Executive Director, Attorney-in-Chief
Federal Defenders of New York

cc: A.U.S.A. Nicholas J. Lewin
A.U.S.A. Sean S. Buckley